

SBM

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August 1, 2005

Corbin Davis
Clerk of the Court
Michigan Supreme Court
P.O. Box 30052
Lansing, MI 48909

306 Townsend Street

Michael Franck Building

Lansing, MI

48933-2083

**RE: ADM File No. 2003-04
Proposed Amendment of Rule 7.205 of the Michigan Court Rules**

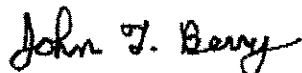
Dear Clerk Davis:

At its July 29, 2005 meeting, the Board of Commissioners of the State Bar of Michigan considered the above proposed amendment published for comment. After careful consideration, the Board adopted a position of opposition to the proposal.

We have enclosed a public policy reports from the Criminal Jurisprudence and Practice Committee and the Standing Committee on Justice Initiatives. The views expressed by the Committees do not necessarily reflect the views of the State Bar.

We appreciate the opportunity to offer this position for the Court's consideration. Please contact me with any further questions.

Sincerely,



John T. Berry
Executive Director

cc: Lynn Richardson, Administrative Counsel, Michigan Supreme Court
Nancy J. Diehl, President
Janet Welch, General Counsel



Report on Public Policy Position

Name of Committee:

Criminal Jurisprudence and Practice Committee

Contact Person:

Valerie Newman/Marty Krohner

Email:

valerie@sado.org; marty@mich.com

Proposed Court Rule or Administrative Order Number:

2003-04 - Proposed Amendment of Rule 7.205 of the Michigan Court Rules

The April 5, 2005, proposed amendment of MCR 7.205(F)(3) would reduce the time for filing a late application for leave to appeal from the current deadline of 12 months from the entry of the final judgment or order appealed from or entry of an order resolving a timely filed postconviction motion to a deadline of 6 months from the entry of such orders. The proposed amendment of MCR 7.205(F)(4) would implement a 6-month deadline that corresponds to the reduction in subrule (3). The 6-month deadline in subrule (4) would make the limitation in (F)(3) inapplicable where the defendant files a postconviction motion within 6 months of the judgment or order appealed from and filed an application for leave to appeal within 21 days of the decision on a postconviction motion or if the defendant sought the appointment of counsel within 6 months of the order, and defendant files an application for leave to appeal within 42 days of the filing of the complete transcripts or within 42 days of the order appointing counsel if the transcript was filed before entry of that order.

Date position was adopted:

5/12/05

Process used to take the ideological position:

Committee meeting

Number of members in the decision-making body:

20

Number who voted in favor and opposed to the position:

13 members who participated unanimously opposed the proposed amendment

Position:

MCR 7.205 is the court rule governing the filing of applications for leave to appeal. There is currently a 12 month filing deadline and the proposal is to shorten that time to 6 months. The committee members are unanimously opposed to this change.

The text (may be provided by hyperlink) of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report:

<http://courts.michigan.gov/supremecourt/Resources/Administrative/2003-04.pdf>

RECOMMEND STATE BAR ACTION ON THIS ISSUE:

Arguments for the position:

The committee believes that there is no reason to shorten the deadline for filing an application for leave to appeal. The 12 months for filing is necessary so that those in prison and/or with limited resources and education can have the time to navigate the legal system to determine how to get their appeal filed. The current 12 month time period provides adequate time for those least able to navigate the system to get the necessary assistance to comply with the procedural requirements mandated for filing an application for leave to appeal with the Court of Appeals.

Arguments against the position (if any):

None

If the State Bar currently has a position on this subject matter, state the position, and an analysis of whether the recommended position and the current State Bar position are in conflict.

On July 29, 2005, the Board of Commissioners voted to oppose the proposal.

Fiscal implications of the recommended policy to the State Bar of Michigan:

None



Report on Public Policy Position

Name of Committee:

Standing Committee on Justice Initiatives

Contact Person:

Hon. Cynthia D. Stephens, Candace Crowley

Email or Phone:

judgescyn@yahoo.com, ccrowley@mail.michbar.org

Proposed Court Rule or Administrative Order Number:

2003-04 - Proposed Amendment of Rule 7.205 of the Michigan Court Rules

The April 5, 2005, proposed amendment of MCR 7.205(F)(3) would reduce the time for filing a late application for leave to appeal from the current deadline of 12 months from the entry of the final judgment or order appealed from or entry of an order resolving a timely filed postconviction motion to a deadline of 6 months from the entry of such orders. The proposed amendment of MCR 7.205(F)(4) would implement a 6-month deadline that corresponds to the reduction in subrule (3). The 6-month deadline in subrule (4) would make the limitation in (F)(3) inapplicable where the defendant files a postconviction motion within 6 months of the judgment or order appealed from and filed an application for leave to appeal within 21 days of the decision on a postconviction motion or if the defendant sought the appointment of counsel within 6 months of the order, and defendant files an application for leave to appeal within 42 days of the filing of the complete transcripts or within 42 days of the order appointing counsel if the transcript was filed before entry of that order.

Date position was adopted:

May 24, 2005

Process used to take the ideological position:

In person discussion and vote

Number of members in the decision-making body:

Seventeen

Number who voted in favor and opposed to the position:

Nine in favor, none opposed

Position:

Oppose the proposed rule change

The text (may be provided by hyperlink) of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report:

<http://courts.michigan.gov/supremecourt/Resources/Administrative/2003-04.pdf>

RECOMMEND STATE BAR ACTION ON THIS ISSUE:**Arguments for the position:**

The proposal is to shorten the time for filing applications for leave to appeal from 12 months to 6 months. If the change is approved it will limit access to the courts in a very drastic manner for those who are least able to help themselves. Experience shows that it is most often people who are illiterate, uneducated or that have mental and/or physical disabilities that need the extra time to figure out how to access the courts for their appeal. There is nothing to be gained from shortening the time limits and there has been no indication of any problems with the 12 month time limitation in terms of finality or ability to respond to appeals after 6 months have passed. This is also detrimental for defendants who plead guilty in criminal matters, as there is no right to counsel on that kind of appeal.

Arguments against the position (if any):

None were discussed

If the State Bar currently has a position on this subject matter, state the position, and an analysis of whether the recommended position and the current State Bar position are in conflict.

On July 29, 2005, the Board of Commissioners voted to oppose the proposal.

Fiscal implications of the recommended policy to the State Bar of Michigan:

None